

FILE COPY

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE APPLICATION :	
FOR REGISTRATION AND :	FINAL DECISION
CERTIFICATION AS AN APPRENTICE :	AND ORDER
FUNERAL DIRECTOR OF :	LS9608051FDR
STANLEY CARLSON, :	
APPLICANT. :	

The State of Wisconsin, Funeral Directors Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Funeral Directors Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 12/3/96 day of December



STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE APPLICATION :
FOR REGISTRATION AND CERTIFICATION :
AS AN APPRENTICE FUNERAL DIRECTOR :
OF :
STANLEY CARLSON, :
APPLICANT :

PROPOSED DECISION

Case No. LS-9608051-FDR
(DOE case no. 96 FDR 020)

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 1.04 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Applicant:

Stanley Carlson
1920 Oaklawn Drive
Eau Claire, WI 54703

Credential-Issuing Authority:

Funeral Directors Examining Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. The applicant, Stanley Carlson, D.D.S., M.D., applied for registration and certification as an apprentice funeral director on a date unspecified in the materials.

B. Dr. Carlson's application was reviewed and denied by the Funeral Directors Examining Board, and written notice of the denial of his application was sent to Dr. Carlson on April 10, 1996. The reason given for the denial was as follows:

Although Dr. Carlson possesses the requisite academic skills to become certified, he also suffers from a major mental illness. Available records indicate he suffers to such a degree that his illness would interfere with his adjustment in any professional practice. Apparently, Dr. Carlson does not believe that he is ill and thus is not in a position to be treated. Therefore, in order to ensure that the public is adequately safeguarded, Dr. Carlson's license must be denied.

C. On a date unspecified in the materials, Dr. Carlson requested a hearing on the denial, which was scheduled for October 2, 1996. The notice of hearing stated that the issue to be considered was:

Is the status of your mental health such that it will not interfere with your adjustment to practice as an apprentice funeral director and will not interfere with your ability to make judgments and qualitative choices in practice as an apprentice funeral director, so that the public may be adequately safeguarded.

D. A prehearing conference by telephone was held on August 13, 1996, during which the procedure for a hearing was discussed briefly. Dr. Carlson offered additional information from other health care professionals who have examined him, and Mr. Zwieg arranged to obtain releases from Dr. Carlson for the information.

E. On September 23rd, Mr. Zwieg informed me and Dr. Carlson of what additional information he had received as a result of his inquiries and Dr. Carlson's releases. Another prehearing conference by telephone was held on September 24th, and preparations were made for the hearing.

F. The hearing was held as scheduled. Dr. Carlson appeared in person. The department was represented by Attorney John R. Zwieg of the Department's Division of Enforcement. The hearing was recorded, and a transcript of the hearing was prepared and delivered on November 4, 1996. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

STATUTES AND ADMINISTRATIVE RULE

445.095 Apprenticeship, funeral directors. (1) (a) A person desiring to become an apprentice as a funeral director shall apply on a form provided for the purpose and appear before the examining board, or any duly appointed representative of the examining board. The application shall state that the applicant is 18 years of age or older, holds a high school diploma or possesses equivalent education as defined by the examining board, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and has completed one academic year of instruction in a recognized college or university in a course of study approved by the examining board or has equivalent education. The application must be substantiated by the oath of the applicant and be accompanied by the fee specified in s. 440.05 (6). When the examining board is satisfied as to the qualification of an applicant for apprenticeship, it shall issue a certificate of apprenticeship ...

(2) (b) The term of a registered apprentice shall be recognized only when given employment in a funeral establishment under the personal supervision of a licensed funeral director

...

(4) Before such apprentice shall be eligible to receive a license to practice funeral directing, the apprentice shall present, in connection with the other evidence required by this chapter, affidavits from the several licensed funeral directors under whom the apprentice has worked, showing that the apprentice has assisted in embalming for burial or shipment at least 25 bodies, has assisted in preparing 25 dead human bodies for burial or transportation, other than by

embalming, and has assisted in at least 25 funeral services during the apprenticeship. This work must all have been done within 4 years from the date of registering as an apprentice, but such time may be extended by the examining board for good cause shown, not to exceed one additional year. The provisions of this section shall be suspended for such period as a registered apprentice may be an active member of the military or naval forces of the United States.

445.10 Term of apprenticeship. (1) The term of an apprenticeship for a funeral director shall begin on the date of registration and terminate after a period of not more than 4 years from the time of first registration unless the time is extended under this chapter. A registered apprentice must make application for license and must appear before the examining board for examination within 4 years from the date of registration unless the time is extended under this chapter. Noncompliance with this subsection terminates the right to serve as an apprentice.

FD 2.06 Supervision of apprentices. (1) Apprentices may engage in the following activities only when under the personal supervision of a licensed funeral director: embalming and other preparing of dead human bodies for burial or transportation, and making funeral arrangements.

(2) Apprentices may conduct funeral services or make removals of bodies under the supervision of a licensed funeral director.

FINDINGS OF FACT

1. The language of sec. 445.095(1)(a), Stats., is unique among Wisconsin licensing statutes. It does not set forth the requirements for a certificate of apprenticeship in a straightforward manner. The second sentence states that "the application shall state that the applicant is 18 years of age or older, holds a high school diploma or possesses equivalent education as defined by the examining board, does not have an arrest or conviction record [substantially related to the profession], and has completed one academic year of instruction in a recognized college or university in a course of study approved by the examining board or has equivalent education." The fourth sentence states that the Funeral Directors Examining Board shall issue a certificate of apprenticeship when it "is satisfied as to the qualification of an applicant for apprenticeship".

2. The applicant, Stanley Carlson:
is 18 years of age or older,
possesses a high school diploma or equivalent education,
does not have an arrest or conviction record, and
has at least one year of academic instruction in a college or university.

3. Dr. Carlson has been diagnosed by numerous health care professionals as having some degree of mental illness, variously categorized as (1) cyclothymic disorder, most of the time in hypomanic state, (2) bipolar disorder, manic type, or (3) bipolar affective disorder, manic.

4. The most recent evaluation of Dr. Carlson, performed by Dr. Bruce Rhoades in 1994, includes these statements: "Since he has no insight, since there is considerable disorganization, and since he denies that there is anything wrong, it is my opinion that he is not treatable"

5. In the hearing, Dr. Carlson demonstrated a rapid and "pressured" manner of speech, and a lack of insight and recognition of his own abnormality.

6. The removal of dead bodies and their embalming and preparation for burial involve the handling of bodily fluids which can carry disease. Making funeral arrangements and conducting funeral services require extremely good judgment and sensitivity to the emotional state of bereaved persons.

7. Dr. Carlson's departure from strict mental "normality", as described in the reports of health care professionals and as suggested in the hearing, raises legitimate concerns about his ability to perform the functions of an apprentice funeral director.

CONCLUSIONS OF LAW

I. The Funeral Directors Examining Board is the legal authority responsible for issuing and controlling credentials for apprentice funeral directors, under ch. 445, Stats. The examining board has both personal jurisdiction over an applicant and subject-matter jurisdiction over this appeal.

II. The applicant, Stanley Carlson, D.D.S., M.D., satisfies all of the requirements listed in the statute for a certificate of apprenticeship.

III. The phrase "satisfied as to the qualifications of an applicant" in sec. 445.095(1)(a), Stats., confers authority on the board to consider elements other than those specifically listed in the statute. In fact, the statute does not specifically state that the elements listed are necessary. Among the additional elements which the board may consider is an assessment of the mental health of an applicant. The Funeral Directors Examining Board did not exceed its statutory authority in denying Dr. Carlson's application.

IV. The concerns raised by Findings of Fact 3 through 6 justify the Funeral Directors Examining Board, which is charged with the protection of the public, in denying an application from Dr. Carlson for a certificate to practice as an apprentice funeral director.

ORDER

THEREFORE, IT IS ORDERED that the previous decision of the Funeral Directors Examining Board is hereby affirmed, and Dr. Stanley Carlson's application for certification as an apprentice funeral director is hereby denied.

OPINION

This case is a review of the decision by the Examining Board of Funeral Directors to deny Stanley Carlson's application for registration and certification as an apprentice funeral director. Although the rule does not explicitly give the board the power to consider the mental health of the applicant, the board has obviously interpreted sec. 445.095(1)(a), Stats., as implicitly granting it the power to consider criteria other than those listed in the statute. I agree. I further find that the board's decision to deny Dr. Carlson's application was a proper exercise of its discretion, and must be affirmed.

The Board's Authority.

The question of whether the board acted within its statutory grant of authority is an issue of interpretation of law. "The objective in construing a statute is to discern the intent of the legislature ... and the primary source to be used is the language of the statute itself", State v. Eichman, 155 Wis.2d 552, 560, 456 N.W.2d 143 (1990). The statute in question is sec. 445.095, Stats., which appears in its entirety above, and which contains language different from that in any other licensing statute. Instead of stating that an applicant for a certificate of apprenticeship "shall have" certain qualifications, it says that "a person desiring to become an apprentice as a funeral director shall apply on a form provided for the purpose" and "the application shall state" that the applicant meets certain criteria. The statute then goes on to say "when the examining board **is satisfied as to the qualification** of an applicant for apprenticeship, it shall issue a certificate of apprenticeship" [emphasis added]. The highlighted language is not used in any other statute; other professions are controlled by statutes which include language such as "an applicant for licensure ... who complies with the requirements of this chapter and satisfactorily passes an examination shall receive a license." See, e.g., sec. 441.06(1), Stats.

I am not aware of any legislative history of sec. 445.095, Stats., which would provide an explanation for the unusual phrasing, and without that I can only interpret the words themselves, within the four corners of the statute. I find that the words must have some meaning, as a general rule of statutory interpretation is that there is no surplus language in statutes, and I therefore find that the phrase in question acts to grant the examining board at least some discretion in considering an applicant's qualifications. In fact, the most reasonable interpretation of the phrase is that it grants broad discretion to the board. This is consistent with sec. 227.01(3)(a), Stats., which says "a 'class 1 proceeding' is a proceeding in which an agency acts under standards conferring substantial discretionary authority upon it. 'Class 1 proceedings' include ... the granting or denial of a license."

Dr. Carlson's Qualifications.

Dr. Carlson has practiced as a doctor and as a dentist, and there is no question that he is academically qualified to practice as an apprentice funeral director. There is also no dispute

that he satisfies the other criteria specified in the statute for certification. The reason for the board's denial of his application is that he has been diagnosed with a mental illness, and the board is not satisfied that the public interest would be served or adequately protected by the grant of a certificate. Specifically, the board is concerned that his mental health might interfere with his ability to make judgments and qualitative choices in practice as an apprentice funeral director.

A brief review of the difficulties Dr. Carlson encountered with his medical and dental licenses, though far from conclusive, is informative. Dr. Carlson worked as a physician at the Northern Wisconsin Center for the developmentally disabled in Chippewa Falls until 1982, when the Center's director treated an incident in which Dr. Carlson performed a breast examination on a patient as inappropriate sexual contact, and "forced" him to retire. Given the numerous difficulties associated with interpreting such incidents, I decline to draw any inferences regarding Dr. Carlson's judgment from this. Following his retirement from the Northern Wisconsin Center, Dr. Carlson worked on a commission basis in a dental lab until he was made aware that such work was illegal. This might seem to have been a fairly innocuous incident, but not when combined with the poor judgment shown by the third incident. When Dr. Carlson later set up a dental practice, he got into trouble by prescribing controlled substances to persons whom he described as addicts started on the drugs by other physicians. He asserted that he was unaware of the illegality of his actions, and I accept his statement that he was "conned" by the addicts, but this incident, especially when taken in context with his illegal commission work, raises serious questions about his knowledge of the parameters of proper practice.

Due to the numerous disciplinary actions which have taken against him, he has been evaluated numerous times in the past ten years. The first was a psychiatric evaluation performed by Dr. William Bonfield in 1987. His conclusions were that Dr. Carlson suffered from a cyclothymic disorder; most of the time in hypomanic state, and a narcissistic personality disorder with compulsive personality traits. In his concluding paragraph, he stated: "Dr. Carlson demonstrated sufficiently impaired judgment to affect his ability to practice medicine. It is of special concern that he has no awareness of the possible inappropriateness of his medical heroics, treatment of immediate family members, dispensing of narcotics, etc. and that he takes no responsibility for any misfortunes in his life, blaming others for his difficulties. He may benefit from psychiatric treatment including a trial of Lithium, but at present I feel his psychiatric problems significantly impair his ability to practice medicine."

Also in 1987, Dr. Carlson underwent a psychological evaluation performed by Dr. Brian Yee. Dr. Yee stated that "Dr. Carlson evidences symptoms and features that are suggestive of a bipolar disorder, manic type," and concluded that there was no indication of any impairment of Dr. Carlson's cognitive functioning, but that questions existed regarding his

judgment and insight. In particular, he concluded that Dr. Carlson was unable either to perceive a need to change his approach, or to articulate a means for effecting such a change (such as, presumably, education or consultation). "This evaluation suggests the continued possibility for similar judgment errors based upon characterologic features and, possibly, a major affective disorder."

In 1991, Dr. Robert Factor performed a psychiatric evaluation of Dr. Carlson and concluded that "Dr. Carlson suffers significant impairments in judgment, in insight about his present situation, and in the quality of his thinking secondary to thought disorganization and paranoia, especially when stressed by the need to make judgments and difficult qualitative choices. I believe these impairments are of such a magnitude that they adversely affect his ability to practice as a professional, to make the logical connections necessary to carry out health care tasks, and to appreciate the requirements of good practice and conform his conduct to those requirements."

In contrast to the other reports, Dr. M. S. Taman performed a psychiatric evaluation of Dr. Carlson in 1991 and did not diagnose any mental illness. He stated that "Dr. Carlson did not show any perceptual difficulties. ... I could not detect any thought disorder. ... His judgment and insight at this time is considered fair." Also supportive of Dr. Carlson's abilities were three letters from Dr. A. A. Lorenz, who practiced with Dr. Carlson for a time at Northern Colony. Dr. Lorenz stated, "I have never felt that Dr. Carlson was a detriment to his patients or incapable of performing his work," and he explained some of Dr. Carlson's behavior by saying that "Dr. Carlson gets very involved in protecting himself in his obsessive compulsive way and becomes quite frightened in his attempt to salvage his lost pride. ... He does have tremendous depression and agitation regarding the loss of his license."

Finally, the most recent psychiatric evaluation of Dr. Carlson was performed by Dr. Bruce Rhoades in 1994. Dr. Rhoades diagnosed a "bipolar affective disorder, manic" and said "Judgment is inappropriate Insight is nil." He stated "It is my opinion that Dr. Carlson remains with significant emotional problems, specifically a recognizable mental illness that I characterize as manic. This so interferes with his judgment so [sic] that it encompasses nearly all aspects of his daily life, I would have no doubt would interfere with his adjustment in any professional practice. Since he has no insight, since there is considerable disorganization, and since he denies that there is anything wrong, it is my opinion that he is not treatable to have this situation corrected."

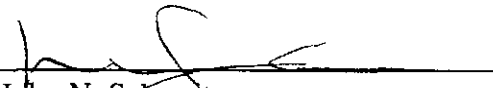
Although Dr. Taman detected no abnormality and Dr. Lorenz testified to Dr. Carlson's better qualities, I cannot ignore the evaluations of Dr. Bonfield, Dr. Yee, Dr. Factor, and Dr. Rhoades, all of which conclude that Dr. Carlson suffers from some form of mental illness. Although I am not competent to render a medical diagnosis, I find support for the opinions of those four doctors in my

observations of Dr. Carlson during the hearing, when he demonstrated a rapid manner of speech, which I assume is what is meant by the term "pressured", and a lack of insight into, and recognition of, his own abnormality.

Dr. Carlson's demeanor, as presented in the reports of health care professionals and as presented in the hearing, is such that the Funeral Directors Examining Board's concern about his ability to properly perform the duties of an apprentice funeral director is legitimate. The concern is that he might endanger the public's physical health or safety by exercising bad judgment in the handling of the potentially disease-carrying fluids from a dead body or, what seems to be a more likely scenario, that he would exercise bad judgment and act inappropriately in the presence of the bereaved, thereby upsetting them and acting contrary to their well-being and welfare.

Since the board is charged with the protection of the public, it legitimately wishes to prevent practice within the profession by an individual who (1) may exercise poor judgment in handling dead bodies, and/or (2) may upset persons with whom he comes into contact, especially bereaved family members and friends of a dead person. The board acted within its authority, it exercised its discretion properly in denying Dr. Carlson's application, and its action must be upheld.

Dated and signed: November 5, 1996.


John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

In the Matter of the Application for Registration and Certification as an Apprentice Funeral Director of

Stanley Carlson,

AFFIDAVIT OF MAILING

Applicant.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On December 5, 1996, I served the Final Decision and Order dated December 3, 1996, LS9608051FDR, upon the Applicant Stanley Carlson by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Applicant and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 213 340 275.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Applicant's last-known address and is:

Stanley Carlson
1920 Oaklawn Drive
Eau Claire WI 54703

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 5th day of December, 1996.

Daniel R. Ritt
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

December 5, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)